

The Gazette of India

EXTRAORDINARY

PART II—Section 2

PUBLISHED BY AUTHORITY

No. 20] NEW DELHI, FRIDAY, JULY 26, 1957/SRAVANA 4, 1879

LOK SABHA

The following Bill was introduced in Lok Sabha on 26th July, 1957:—

BILL* No. 47 OF 1957

A Bill further to amend the Foreign Exchange Regulation Act, 1947.

BE it enacted by Parliament in the Eighth Year of the Republic of India as follows:—

1. This Act may be called the Foreign Exchange Regulation (Amendment) Act, 1957. Short title.

7 of 1947. 5 2. In section 1 of the Foreign Exchange Regulation Act, 1947 Amendment of section 1.
(hereinafter referred to as the principal Act), sub-section (4) shall be omitted.

3. In section 2 of the principal Act,—

(i) for clause (a), the following clauses shall be substituted, Amendment of section 2.
10 namely:—

‘(a) “Appellate Board” means the Foreign Exchange Regulation Appellate Board constituted by the Central Government under sub-section (1) of section 23E;

15 (ai) “authorised dealer” means a person for the time being authorised under section 3 to deal in foreign exchange;

(a ii) “bearer certificate” means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;

20 (a iii) “certificate of title to a security” means any document used in the ordinary course of business as proof of the

*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Lok Sabha, the consideration of the Bill.

possession or control of the security, or authorising or purporting to authorise, either by an endorsement or by delivery, the possessor of the document to transfer or receive the security thereby represented;

(*aiv*) "coupon" means a coupon representing dividends 5 or interest on a security;';

(*ii*) in clause (b), after the words "postal notes", the words "postal orders" shall be inserted;

(*iii*) after clause (b), the following clause shall be inserted, namely:—

10

'(*bb*) "Director of Enforcement" means the Director of Enforcement of Foreign Exchange Regulation appointed by the Central Government for the purpose of enforcing the provisions of this Act;';

(*iv*) in clause (e), for the word "issued", the words "created 15 or issued" shall be substituted;

(*v*) in clause (f), after the words "refined or not", the words "and jewellery or articles made wholly or mainly of gold" shall be inserted;

(*vi*) in clause (k), after the words "sub-units of unit 20 trusts", the words "and includes certificates of title to securities" shall be inserted;

(*vii*) in clause (1),—

(a) for the word "means", the word "includes" shall be substituted; and 25

(b) after the words "or elsewhere", the words "and jewellery or articles made wholly or mainly of silver" shall be inserted.

Amendment of section 3. 4. In section 3 of the Principal Act, in sub-section (2), after the words "under this section", the words "shall be in writing and" 30 shall be inserted.

Amendment of section 8. 5. In sub-section (2) of section 8 of the principal Act, for the words "jewellery or precious stones, or Indian currency notes, bank notes or coin", the words "or precious stones or Indian currency" shall be substituted. 35

Amendment of section 9. 6. In section 9 of the principal Act, in clause (a), for the word "owns", the words "owns or holds" shall be substituted.

7. In section 13 of the principal Act,—

Amendment
of section
13.

(a) in sub-section (1),—

1 of 1956 5

(i) for the words “No person shall”, the words and figures “Notwithstanding anything contained in section 81 of the Companies Act, 1956, no person shall” shall be substituted;

(ii) after clause (d), the following clause shall be inserted, namely:—

10

“(e) acquire, hold or dispose of any foreign security”.

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

15

“(4A) Notwithstanding anything contained in any other law, no transfer of any share of a company registered in India made by a person resident outside India to another person also resident outside India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferor or the transferee.”.

20 8. After section 13 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
13A.

25

‘13A. (1) Notwithstanding anything contained in any other law or in any contract, agreement or other instrument, the holder of any security or class of securities notified in this behalf by the Central Government in respect of which the principal or interest or both is for the time being payable outside India in any country or place so notified shall not be entitled except with the general or special permission of the Reserve Bank, to have any such payment made at any place in India.

Restrictions
on payment
in respect of
certain securities.

30

(2) In this section, the expressions “holder” and “security” shall have the same meanings as in sub-section (5) of section 13.’

9. In section 14 of the principal Act, for the words “document of title” wherever they occur, the words “ certificate of title” shall be substituted.

Amendment
of section
14.

35

Amendment
of section
15.

10. In section 15 of the principal Act, for the words "no person shall in India issue any bearer security or coupon or so alter any document that it becomes a bearer security or coupon", the words "no person shall, in India, and no person resident in India shall, outside India, create or issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon" shall be substituted. 5

Amendment
of section
16.

11. In sub-section (2) of section 16 of the principal Act, in sub-clause (i) of clause (b), for the words "documents of title", the words "certificates of title" shall be substituted. 10

Amendment
of section
17.

12. In sub-section (1) of section 17 of the principal Act, for the words "upon any trust under which", the words "so that" shall be substituted.

Amendment
of section
18.

13. In section 18 of the principal Act,—

(a) in sub-section (3), for the words "a company", the words "any business" shall be substituted; 15

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(3A) Notwithstanding anything contained in any other law, no transfer of an interest in any business in India made by a person resident outside India to any person also resident outside India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferor or the transferee. 20

(3B) Except with the general or special permission of the Reserve Bank, no person resident in India shall transfer any interest in any business in India, or create any interest in such business, to or in favour of a national of a foreign State."; 25

(c) in sub-section (4),—

(i) for the words "any company", the words "any firm or company" shall be substituted;

(ii) for the words "any such person", the words "any person controlling such firm or company" shall be substituted. 30

Insertion of
new sections
19A and
19B.
Custody of
documents.

14. After section 19 of the principal Act, the following sections shall be inserted, namely:—

"19A. Where, in pursuance of an order made under sub-section (2) of section 19 or of a search warrant issued under 40

sub-section (3) of the said section, any book or other document is furnished or seized, and the Director of Enforcement has reasons to believe that the said document would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding four months or if, before the expiry of the said period of four months, any proceedings under section 23—

(a) have been commenced before him, until the disposal of those proceedings, including the proceedings before the Appellate Board, if any, or

(b) have been commenced before a Court, until the document has been filed in that Court.

19B. (1) The Central Government or the Reserve Bank may, at any time cause an inspection to be made by one or more of its officers, of the books and accounts and other documents of any authorised dealer.

(2) It shall be the duty of every authorised dealer and, where the authorised dealer is a company or a firm, of every director, partner or other officer of the authorised dealer to produce to any officer making an inspection under sub-section (1) all such books, accounts and other documents in his custody or power and to furnish him with any statement or information relating to the affairs of the authorised dealer as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) may examine on oath any authorised dealer or his agent or, where the authorised dealer is a company or a firm, any director, partner or other officer of the authorised dealer in relation to its business.

(4) If any person fails to produce any book, account or other document or to furnish any statement or information relating to the authorised dealer which, under sub-section (2) it is his duty to produce or furnish, or to answer any question relating to the business of the authorised dealer which he is asked by an officer making an inspection under this section, he shall be deemed to have contravened the provisions of this Act.”.

Amendment
of section
22.

15. In section 22 of the principal Act, after the words and figures "under section 19", the words, figures and letters "or with any requirement under section 19B" shall be inserted.

Amendment
of section
23.

16. In section 23 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall 5
be substituted, namely:—

"(1) If any person contravenes the provisions of section 4, section 5, section 9 or sub-section (2) of section 12 or of any rule, direction or order made thereunder, he shall—

10

(a) be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place, or five thousand rupees whichever is more, as may be adjudged by the Director of Enforcement in the manner 15
hereinafter provided, or

(b) upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(1A) Whoever contravenes any of the provisions of 20
this Act or of any rule, direction or order made thereunder, other than those referred to in sub-section (1) shall, upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

25

(1B) Any Court trying a contravention under sub-section (1) or sub-section (1A) and the authority adjudging any contravention under clause (a) of sub-section (1) may, if it thinks fit, and in addition to any sentence or penalty which it may impose for such contravention, direct 30
that any currency, security, gold or silver, or goods or any other money or property, in respect of which the contravention has taken place, shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the person committing the contraven- 35
tion or any part thereof shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation.—For the purposes of this sub-section, property in respect of which contravention has taken place 40

shall include deposits in a bank, where the said property is converted into such deposits.”;

(b) in sub-section (2), for the words “one thousand”, the words “two thousand” shall be substituted;

5 (c) for sub-sections (3) and (4), the following sub-sections shall be substituted, namely:—

“(3) No Court shall take cognizance—

10 (a) of any offence punishable under sub-section (1) except upon complaint in writing made by the Director of Enforcement, or

11 of 1922. (b) of any offence punishable under sub-section (1A) of this section or under section 54 of the Indian Income-tax Act, 1922, as applied by section 19 of this Act, except upon complaint in writing made by the
15 Director of Enforcement or any officer authorised in this behalf by the Central Government or the Reserve Bank by a general or special order:

20 Provided that where any such offence is the contravention of any of the provisions of this Act or any rule, direction or order made thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission.

25 (4) Nothing in the first proviso to section 188 of the Code of Criminal Procedure, 1898, shall apply to any offence
5 of 1898. punishable under this section.”.

17. After section 23B of the principal Act, the following sections shall be inserted, namely:—

Insertion of new section 23C to 23F³

30 “23C. (1) If the person committing a contravention is a company, every person who, at the time the contravention was committed, was in-charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention
35 and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

40 Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention under this Act has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or 5 other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,— 10

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Power to
adjudicate.

23D. (1) For the purpose of adjudging under clause (a) of 15 sub-section (1) of section 23 whether any person has committed a contravention, the Director of Enforcement shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity of being heard and if, on such inquiry, he is satisfied that the person has committed the contravention, 20 he may impose such penalty as he thinks fit in accordance with the provisions of the said section 23:

Provided that if, at any stage of the inquiry, the Director of Enforcement is of opinion that having regard to the circumstances of the case, the penalty which he is empowered to 25 impose would not be adequate, he shall, instead of imposing any penalty himself, make a complaint in writing to the Court.

(2) While holding an inquiry under this section, the Director of Enforcement shall have power to summon and enforce the attendance of any person to give evidence or to produce a 30 document or any other thing which, in the opinion of the Director of Enforcement, may be useful for, or relevant to, the subject matter of the inquiry.

(3) Any sum paid by way of penalty or any currency, security, gold or silver or goods or money or any other property 35 confiscated under section 23 shall vest in the Central Government.

Appeals.

23E. (1) The Central Government may, by notification the Official Gazette, constitute an Appellate Board to be called the Foreign Exchange Regulation Appellate Board consisting of 40

a Chairman and another member to be appointed by the Central Government for hearing appeals against the orders of the Director of Enforcement made under section 23.

5 (2) Any person aggrieved by such an order may, after depositing the sum imposed by way of penalty under section 23, and within thirty days from the date of the order, prefer an appeal to the Appellate Board:

10 Provided that the Appellate Board may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

15 (3) On receipt of an appeal under sub-section (2), the Appellate Board may, after calling for a report from the Director of Enforcement and after making such further inquiry as it thinks fit, confirm, modify or set aside the order appealed against, and the decision of the Appellate Board shall be final; and if the sum deposited by way of penalty under sub-section (2) exceeds the amount directed to be paid by the Appellate Board, the excess amount shall be refunded.

20 (4) The Appellate Board may call for the records of any proceeding in which the Director of Enforcement has made an order under clause (a) of sub-section (1) of section 23 and make such order in the case as it thinks fit.

25 (5) No order of the Director of Enforcement made under section 23 shall be varied by the Appellate Board so as to prejudicially affect any person without giving him reasonable opportunity of being heard; and subject thereto, the Appellate Board shall follow such procedure in respect of the proceedings before it as may be prescribed.

30 23F. If any person fails to pay the penalty imposed by the Director of Enforcement or the Appellate Board, or fails to comply with any of their directions or orders, he shall, on conviction before a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both." Penalty for contravention or order made by Director of Enforcement and Appellate Board.

35 18. In sub-section (1) of section 24 of the principal Act, after the words "is prosecuted", the words "or proceeded against" shall be inserted. Amendment of section 24.

19. In section 27 of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely:— Amendment of section 27.

40 "(bb) prescribe the manner in which inquiries may be held under this Act and the procedure to be followed in respect of the proceedings before the Director of Enforcement or the Appellate Board."

STATEMENT OF OBJECTS AND REASONS

The Foreign Exchange Regulation Act, 1947 (7 of 1947) is a temporary Act due to expire on the 31st day of December, 1957. When it was enacted, it was hoped that the world trade and economic conditions would stabilise themselves after the initial post-war period, but this anticipation has not been fulfilled. India still continues to be short of foreign exchange and it is necessary to ensure that our foreign exchange resources are conserved in the national interest. The trend of events in this and other countries further indicates that the shortage is likely to continue for an indefinite period, and it is difficult to visualise at this stage that in any foreseeable future it will be possible to dispense with the exchange control altogether. Another important factor is the development programme under the Second Five Year Plan which compels us to husband and utilise our external resources properly. In the circumstances, the continuance of the Foreign Exchange Regulation Act is unavoidable and it is proposed to place it on a permanent footing.

2. The experience gained in the working of the Foreign Exchange Regulation Act has brought to light certain lacunae which hamper proper administration of the Act and the investigations and the legal proceedings thereunder. This opportunity is, therefore, being taken to carry out certain other amendments in the Act with a view to remove these defects. The most important of these amendments is the one providing for departmental inquiry and adjudication of foreign exchange offences by an authority constituted by Government on the lines of the Sea Customs Act.

3. The Bill seeks to achieve these objects.

NEW DELHI;

T. T. KRISHNAMACHARI

The 13th July, 1957.

FINANCIAL MEMORANDUM

Clause 3 (iii) of the Bill and the proposed section 23E (1) in clause 17 thereof contemplate the appointment of a Director of Enforcement and the constitution of an Appellate Board. They have been empowered to adjudicate upon the contravention of certain provisions of this Act under the proposed sections 23D and 23E of clause 17. An Enforcement Unit with a Director at its head is already functioning for dealing with cases arising out of contraventions of the Act. A provision for Rs. 3,15,000/- has been made in the budget for the current year for this Unit. No extra expenditure is, therefore, likely to be involved on account of the implementation of the proposals for adjudication proceedings of the Bill. Moreover, it is expected that there would be some savings on account of litigation expenses provided in the budget for court cases. If, however, there is any additional expenditure for the implementation of these proposals, it is likely to be offset by the savings from litigation expenses.

20 AUG 1957 (700)

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 19 of the Bill which seeks to amend section 27 of the Act authorises the Central Government to make rules prescribing the manner in which inquiries may be held under this Act and the procedure to be followed in respect of the proceedings before the Director of Enforcement and the Appellate Board. These are procedural matters. The delegation of legislative powers is, therefore, of a normal character.

M. N. KAUL,
Secretary.